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March 29, 2011

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, D. C. 20423

ENTERED  
Office of Proceedings  
MAR 29 2011  
Part of  
Public Record

Dear Ms. Brown:

Attached for filing in STB Finance Docket No. 35459, V&S Railway, LLC--  
Petition for Declaratory Order--Railroad Operations in Hutchinson, Kansas, is the  
Rebuttal of V&S Railway, LLC.

If you have any question concerning this pleading or I otherwise can be of  
assistance, please let me know.

Sincerely yours,

  
Fritz R. Kahn

cc: Edward J. Fishman, Esq.  
Robert T. Opal, Esq.

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC**

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**STB Finance Docket No. 35459**

**V&S RAILWAY, LLC  
-- PETITION FOR DECLARATORY ORDER --  
RAILROAD OPERATIONS IN HUTCHINSON, KANSAS**

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**REBUTTAL  
OF  
V&S RAILWAY, LLC**

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**V&S RAILWAY, LLC**

**Dated: March 29, 2011**

SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC

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STB Finance Docket No. 35459

V&S RAILWAY, LLC  
-- PETITION FOR DECLARATORY ORDER --  
RAILROAD OPERATIONS IN HUTCHINSON, KANSAS

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REBUTTAL  
OF  
V&S RAILWAY, LLC

Petitioner, V&S Railway, LLC ("V&S"), pursuant to the Board's Decision, served February 17, 2011, submits the following rebuttal to the Respondents' reply, filed March 9, 2011:

I.

Valid Petition for Declaratory Order

Notwithstanding that the United States District Court for the District Court of Kansas in Case No. 08-1402, WEB, V&S Railway, LLC v. Hutchinson Salt Company, Inc., Hutchinson Transportation Company, Inc. and BNSF Railway Company, by its Memorandum and Order, dated December 17, 2010, directed V&S expeditiously to seek the Board's answers to three questions which it had posed, Respondents ask the Board to deny V&S' Petition for Declaratory Order. Respondents argue that V&S' Petition for Declaratory Order should be denied, because "V&S failed to include any verified evidence to support its allegations."

Respondents evidently lost sight of the fact that, pursuant to 49 C.F.R. §1104.4(a), "[a] pleading, document or paper . . . signed [by the attorney representing the party] need

not be verified or accompanied by affidavit unless required elsewhere in these rules."

V&S' Petition for Declaratory Order was filed pursuant to 5 U.S.C. §554(e) and 49 C.F.R. §1117.1, and neither one requires that a petition for declaratory order be verified or accompanied by affidavit.

Indeed, the Board routinely entertains petitions for declaratory order which are neither verified nor accompanied by affidavit. See, i.e., STB Finance Docket No. 35366, Wisconsin Department of Transportation—Petition for Declaratory Ruling—Almena, Cameron, Rice Lake Rail Line in Barron County, WI, filed April 2, 2010; STB Finance Docket No. 35316, Allied Erecting & Dismantling, Inc., et al. v. Ohio Central Railroad, Inc., et al.—Petition for Declaratory Order, filed November 2, 2009; STB Finance Docket No. 35299, Borough of Riverdale Petition for Declaratory Order and Stay, etc., filed September 22, 2009; STB Finance Docket No. 35290, West Point Relocation, Inc. and Eli Cohen—Petition for Declaratory Order, filed August 13, 2009.

The regulations applicable to petitions for declaratory order should be contrasted with the Board's regulations applicable to the filing of petitions for exemption. Under 49 C.F.R. §1121.3(a), "[a] party filing a petition for exemption shall provide its case-in-chief, along with its supporting evidence, workpapers, and related documents at the time it files its petition." Those regulations are not applicable here.

Nevertheless, it bears noting that V&S' Petition for Declaratory Order had attached to it a copy of the District Court's Memorandum and Order which set out sufficient facts to enable the Board to answer the three questions posed by the District Court.

## II.

### The Hutchinson and Northern Railway Company

Respondents' reply, at page 4-6, goes into great detail in identifying the parties, relevant entities and witnesses. It, however, is rather skimpy in identifying The Hutchinson and Northern Railway Company ("HN") the 5.14-mile line of which was purchased by V&S pursuant to the Board's authorization in STB Finance Docket No. 34875, V&S Railway, LLC—Acquisition and Operation Exemption—The Hutchinson and Northern Railway Company, served May 31, 2006, 71 Fed. Reg. 30978, May 31, 2006.

HN was a rail carrier, certificated to engage in interstate and foreign commerce by the Decision of the Interstate Commerce Commission ("ICC") in Operation of Hutchinson & Northern Ry., 111 I.C.C. 403 (1926). The Commission, 111 I.C.C. at 404, described the operation of then 4.731-mile railroad, as follows:

The applicant serves as an intermediate carrier of freight between points on the Arkansas Valley Interurban Railway and Hutchinson, where connection is made with the Missouri Pacific, Chicago, Rock Island & Pacific, and Atchison, Topeka & Santa Fe. The last-named carriers reach Hutchinson but do not serve industries in the eastern portion thereof. Such industries, which include salt mining, manufacturing, and milling are reached by the applicant's line. The applicant also handles switching traffic between industries located on its line and each of the aforesaid connections.

Respondent, at page 18 of their reply, contend that "there is no evidence who built the subject track many years ago." To the contrary, the ICC in its Decision, id., said, "The line in question was built by local citizens interested in the promotion and development of the industrial district of East Hutchinson."

In the intervening years, ownership of the HN changed hands several times. Carey Salt Company owned the HN for most of that time but sold the HN in 1988 to

American Salt Company, a subsidiary of North American Salt Company. HN subsequently was owned by IMC Chemical North American, L.L.C., Processed Minerals, Inc. and, at the time its line was purchased by V&S, Pacific Western Railroad.

HN remained a rail carrier throughout that time until it sold its line to the V&S. It was listed as a rail carrier in the ICC's 1972 General Index of Carriers & Organizations and in the ICC's 1990 Alphabetical Index of Interstate Commerce Commission Regulated Transportation Carriers. HN was listed as a participating railroad in The Official Railway Equipment Register, and it was among the railroads identified in the Official Railroad Station List and in The Official Railway Guide. Attached as Exhibit A is the portrayal of the HN in Edward A. Lewis' American Short Line Railway Guide, The Baggage Car. Morrisville, VT (1978), and as Exhibit B, the portrayal of the HN in Edward A. Lewis' American Shortline Railway Guide, Kalmbach Publishing Co., Waukesha, WI (1996).

Respondents' witness, Mr. Max Liby, attached to his Verified Statement an Operating Rights Agreement between HN and Hutchinson Salt Mine, dated as of April 1, 1998, which identifies HN as the party which "owns and operates 5.14 miles of trackage in Hutchinson, Kansas."

This was the rail carrier the 5.14-mile line of which V&S was authorized by the Board to acquire and operate, and it is on this 5.14-mile of line on which Hutchison Salt Company, Inc. ("HSC") and/or Hutchinson Transportation Company ("HTC") have been operating their trains in what they characterize as private carriage over the objections of the V&S.

### III.

#### Consensual private carrier operations

Respondents completely mischaracterize the Board and ICC decisions upon which they primarily rely. At page 2 of their Reply, Respondents claim that "the STB and its predecessors the ICC have repeatedly acknowledged that private rail operations can occur over common carrier trackage, where the private operator is moving its own goods and is not holding itself out to service the general public for compensation." Respondents advance essentially the same contention at page 20 of their reply. What the Board and ICC held in each of the cases cited by Respondents is that **with the consent of the rail carrier** a shipper may be able to operate its own trains in private carriage on the rail carrier's tracks. In STB Finance Docket No. 34133, S.D. Warren Company d/b/a Sappi Fine Paper North America—Acquisition and Operation Exemption—Maine Central Railroad Company and the Springfield Terminal Rail Company, served September 30, 2002, the private carrier operations were conducted pursuant to an agreement between the shipper and the rail carrier. In Finance Docket No. 31916, The Boing Company—Acquisition and Operation Exemption—Chehalis Western Railway Company, served October 10, 1991, the private carrier operations were conducted pursuant to an agreement between the shipper and the rail carrier. In Finance Docket No. 31078, Brotherhood of Locomotive Engineers v. Interstate Railroad Company, et al., served November 20, 1987, the private carrier operations were conducted pursuant to an agreement between the shipper and the rail carrier. HN and Hutchinson Salt Mine entered into such an Operating Rights Agreement, dated as of April 1, 1998, allowing Hutchinson Salt Mine to operate its trains on 500 feet of HN track. Article 16 of the

General Conditions of the Agreement disallowed assignment of the Agreement by one party without the written consent of the other party. No such consent was ever given, and the Operating Rights Agreement was not assigned by HN to V&S, and HSC and/or HTC, pursuant to the agreement, may not operate on the V&S' track.

V&S and HSC and/or HTC in the meantime have not entered into an agreement for the allegedly private carrier operations by HSC and/or HTC on the V&S' railroad line. To the contrary, V&S asked HSC and/or HTC to stop operating their trains on the line which V&S had been authorized by the Board to acquire and operate, and it was only after HSC and/or HTC declined to accede to V&S' request that V&S brought its District Court action.

#### IV.

##### The District Court's First Question

Respondents endeavor to avoid answering the first question posed by the District Court, but they cannot escape the fact that V&S is the sole carrier authorized to operate on the railroad line between Milepost 0.0 and Milepost 5.14 in Hutchinson, Reno County, Kansas, and to interchange traffic with Defendant BNSF Railway Company.

Respondents, at page 12 of their reply, label the first question posed by the District Court a "red herring because no party has contended that another rail carrier is, or has asked to be, authorized by the Board to operate on the subject track." Respondents' argument is a *non sequitur*, for recognition that V&S is the only rail carrier authorized to operate on its 5.14-mile of railroad line in no way is dependent on whether anyone else has sought to operate on the line as a rail carrier.



Respondents, at page 22 of their reply, as they do at pages 16-17 of their reply, assert that HSC and/or HTC are not rail carriers. V&S agrees and never has contended otherwise. HSC and/or HTC very well may be private carriers, not subject to the jurisdiction of the Board. As noted above, however, that HSC and/or HTC may be private carriers does not give them license to operate on V&S' line without its consent, and V&S has not agreed to allow HSC and/or HTC to operate their trains on its tracks.

Again, at page 22 of their reply, Respondents label the District Court's first question a red herring, allegedly 'because for more than three years' time V&S has not been asked to perform any services on its tracks. That HSC and/or HTC have not sought to avail themselves of V&S' services for more than three years' time does not render V&S any less of a rail carrier. 49 U.S.C. §11101(a) obliges a rail carrier to provide service only on reasonable request. Evidently, HSC and/or HTC have not asked V&S to handle any of their traffic during that more than three-year period. That is a tacit admission on HSC's and/or HTC's part that they have operated their trains on V&S' tracks throughout that entire time.

V.

The District Court's Second Question

Respondent, beginning at page 22 of their reply, seek to refrain from acknowledging in response to the second question posed by the District Court that HSC and/or HTC do not have the right to operate on V&S' railroad line and to interchange traffic with the BNSF by virtue of the fact that they own part of the real property underlying the railroad line and that they claim ownership of some of the tracks and improvements on the railroad line the Board authorized V&S to acquire and operate.

Respondents imply that, since the operation by HSC and/or HTC of their trains on V&S' tracks would not interfere with V&S' operations on its line, HSC and/or HTC have the perfect right to operate their trains on V&S's tracks. Such bootstrapping is utter nonsense. First, HSC and/or HTC refuse to tender their traffic for transportation by V&S, thereby minimizing V&S' operations on its line, and then, since operating their trains on V&S' tracks wouldn't interfere with V&S' operations on its line, HSC and/or HTC are free to operate their trains on V&S' line. Such reasoning would allow every shipper in the country to operate on the lines of the railroad serving its facility simply by withholding its traffic so as not to interfere with the nonexistent operations of the railroad. Just to state the proposition establishes its absurdity.

If, as Respondents contend, at pages 13 and 26 of their reply, HSC and/or HTC did not use V&S' services because they believed them to be unsatisfactory when used, their remedy was to file a complaint with the Board under 49 U.S.C. §11701(b). They assuredly did not have the right to operate their trains on the railroad line which the Board authorized V&S to acquire and operate.

Respondents seem to suggest that there are two railroad lines extending between Milepost 0.0 and Milepost 5.14. At page 9, of their reply, referring to the Verified Statement of Mr. Liby, Respondents contend, "[A]ll of the rail, ties and switches located on the Salt Mine Real Estate were owned by and was the responsibility of the salt mine" but at the same time "all the rail, switches and ties that were located on the H&N's real estate were owned by and the responsibility of H&N." In fact, there was only one railroad line extending between Milepost 0.0 and Milepost 5.14, and that was the railroad line of the HN certificated by the ICC, portrayed in the American Short Line Railway

Guide and the American Shortline Railway Guide and acknowledged to be owned by the HN in the Operating Rights Agreement of April 1, 1998, attached to Mr. Liby's Verified Statement. It is that 5.14-mile railroad line which the Board authorized the V&S to acquire and operate.

It well may be that part of V&S' 5.14-mile railroad line is located on easements extending across realty of HSC and/or HTC and that HSC and/or HTC claim to own some of the track and other improvements on V&S' railroad line. That, however, is wholly immaterial in determining whether HSC and/or HTC may operate their trains on V&S' line. Directly on point is the ICC's Decision in Finance Docket No. 31971, South Orient Railroad Company, Ltd.—Acquisition and Operation Exemption—Line of the Atchison, Topeka and Santa Fe Railway Company, served August 26, 1992. In that proceeding the ICC held that its authorization was not required for the transfer by the Atchison, Topeka and Santa Fe Railway Company ("ATSF") of its right-of-way and other fixed assets to the South Orient Rural Rail Transportation District ("SORRTD"), subject to an exclusive, permanent easement to allow the South Orient Railroad Company, Ltd., ("SORC") to which ATSF was transferring its business and right to operate a line of railroad, to become the rail carrier on the line. The ICC noted that "SORC asserts that the parties desire that SORRTD 'never operates and never has the right to operate a railroad over the Railroad Line.'"

The ICC cited its earlier decision in Maine, DOT—Acq. Exemption, ME. Central R. Co., 8 I.C.C.2d 835 (1991), in which the ICC held its authorization was not required for the State of Maine Department of Transportation ("MDOT") to acquire the real property and tracks structure of 15.66 miles of railroad line owned by the Maine Central

Railroad Company ("MEC"), subject to a permanent easement for the railroad's continued operation as a common carrier of freight. The ICC, 8 I.C.C.2d at 836, stated that MDOT "has no intention or ability to assume operation" on the MEC's line of railroad; "state law prohibits it from operating as a carrier."

In STB Finance Docket No. 34405, Transportation Agency of Monterey County—Acquisition Exemption—Certain Assets of Union Pacific Railroad Company, served January 23, 2004, the Board said of the transferee of certain assets of a line of railroad it "will provide passenger, but not freight service over the line."

In STB Finance Docket No. 33838, Metro Regional Transit Authority--Acquisition Exemption—CSX Transportation, Inc., served October 10, 2003, the Board noted that, pursuant to the agreement between the parties, the transferee of certain assets of a railroad line "does not have the right or the obligation to provide freight rail service."

In STB Finance Docket No. 34057, State of Georgia, Department of Transportation—Acquisition Exemption—South Carolina Central Railroad, Inc., served April 30, 2002, the Board concluded that the acquirer of 101.27 miles of rail lines "will not conduct any operations over the Lines and will not hold itself out to do so."

In short, merely because HSC and/or HTC may own certain of the realty and claim ownership of some of the improvements on the 5.14-mile line of railroad which the Board authorized V&S to acquire and operate does not permit HSC and/or HTC to operate their trains on the line. HSC and/or HTC may not operate on the line without the consent of V&S or interchange traffic with BNSF notwithstanding that HSC and/or HTC may own some parcels of the real estate underlying the line and claim ownership of segments of the tracks and improvements on it.

Just what pieces of realty and segments of track, if any, HSC and/or HTC, in fact may own is in dispute and ultimately will need to be decided by the District Court. As the Board held in STB Finance Docket No. 34867, General Railway Corporation, d/b/a Iowa Northwestern Railroad—Exemption for Acquisition of Railroad Line—in Osceola and Dickinson Counties, IA, served June 15, 2007:

Any dispute regarding the validity of this agreement [between the parties], or ownership of the Line, involves questions of state contract and property law. The Board is not the proper forum to resolve such disputes. Rather, these matters are best left for state courts to decide.

Similarly in STB Docket No. AB-406 (Sub-No. 6X), Central Kansas Railway Limited Liability Company—Abandonment Exemption—in Marion and McPherson Counties, KS, served December 18, 1998, the Board said, “State courts appear to be the proper place for parties to resolve property disputes about the parties’ expectations and how much property has been transferred and how much has been retained.”

As Respondents recognized, at page 23 of their reply, the documents by which HSC and/or HTC acquired the property which they say is theirs and any agreements said to relate to their operations on the HN are governed by Kansas property law. They, however, err in maintaining that the “right of HSC/HTC to operate on the subject track, including moving its rock salt and tendering traffic from that track does not fall under authority of the Board.” To the contrary, Board is empowered to find and should find that HSC and/or HTC may not operate on the line of railroad which it authorized V&S to acquire and operate without V&S’ consent or to interchange traffic with BNSF merely because HSC and/or HTC may own certain parcels of the real estate underlying the line and claim ownership of segments of the tracks and improvements on the line.

V.

The District Court's Third Question

Respondents try to avoid acknowledging, in answer to the third questions posed by the District Court, that neither HN nor any successor-in-interest had abandoned the 1925 easement across Parcel 1 or any other segment of the line which the Board authorized V&S to acquire and operate. Respondents' reliance on decisions pertaining *de facto* abandonments is altogether misplaced. It is well established that a line of railroad is not abandoned until the Board or the ICC has declared it to be abandoned. See, i.e., STB Finance Docket No. 34376, City of Crede, CO—Pet. for Declaratory Order, served May 3, 2005; Finance Docket No. 32518, The Phillips Company—Petition for Declaratory Order, served April 18, 1995; Finance Docket No. 29330, Modern Handcraft, Inc.—Abandonment in Jackson County, MO, served August 21, 1981. Contrary to the Respondents' assertion, whether the Board or the ICC in fact has authorized the abandonment of a railroad line is not governed by state law. It clearly is a matter for the agency's determination, and Respondents have failed to cite to the Board or ICC decision in which it authorized the abandonment of the easement across Parcel 1 or any other segment of the line which the Board authorized V&S to acquire and operate.

WHEREFORE, V&S Railway, LLC asks that the Board decide the questions referred to it by the United States District Court for the District of Kansas set out in its Memorandum and Order and find (1) that V&S Railway, LLC is the sole rail carrier authorized to operate on the railroad line between Milepost 0.0 and Milepost 5.14 in Hutchinson, Reno County, Kansas, and to interchange traffic on its line with BNSF Railway Company, (2) that Hutchinson Salt Company, Inc. and/or Hutchinson

Transportation Company, Inc.. may not operate on the line of railroad acquired by V&S Railway, LLC without its consent or interchange traffic with BNSF Railway Company notwithstanding that Hutchinson Salt Company, Inc. and/or Hutchinson Transportation Company, Inc. may own parcels of the real estate underlying the railroad line acquired by V&S Railway, LLC and/or claim ownership of some of the tracks and improvements on the railroad line which the Board authorized V&S Railway LLC to acquire and operate and (3) that neither The Hutchinson & Northern Railway Company nor any successor-in-interest has abandoned the segment of the line on Parcel 1 granted to it by virtue of the 1925 easement or any other segment of the line acquired to be operated by V&S.

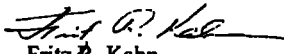
A copy of the Board's decision should be mailed to Hon. Wesley E. Brown, United States Senior District Judge, United States District Court for the District of Kansas, U.S. Courthouse, 401 North Market Street, Wichita, KS 67202.

Respectfully submitted,

V&S RAILWAY, LLC

By its attorneys,

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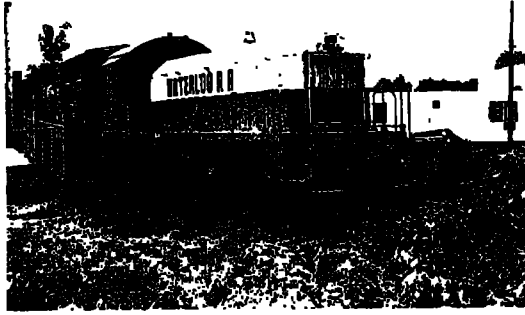
Dated: March 29, 2011

Exhibit A

# **AMERICAN SHORT LINE RAILWAY GUIDE**

*by Edward A. Lewis*





WLO No. 4 spots a box car on an industrial siding in Waterloo, IA. - William S. Kuba

#### WATERLOO RAILROAD CO. — WLO

1006 1/2 East 4th Street, Waterloo, IA 50703

Operates for freight service in conjunction with the Illinois Central Gulf from Waterloo to Gilbertsville, IA, 11.44 miles and at Cedar Rapids, IA. A branch line runs from East Waterloo to Aladdin ("Waterloo Belt Line"). Connections are made with the Illinois Central Gulf, Rock Island, Milwaukee Road, Chicago & North Western and Cedar Rapids & Iowa City railroads. The maximum load limit varies from 240,000 to 263,000 pounds.

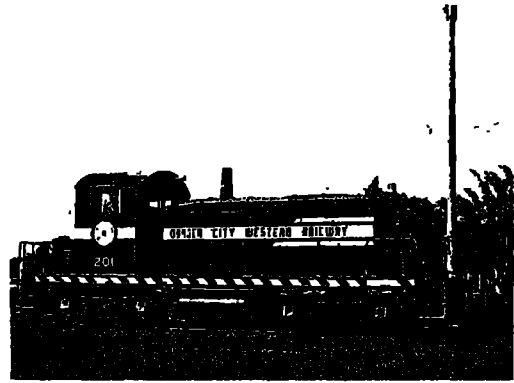
Traffic is general commodities. Revenue class F.

The Waterloo & Cedar Falls Rapid Transit Company was chartered in 1895, and opened for traffic the following year. At the same time the Waterloo Street Railway was purchased. On April 1, 1904, the company's name was changed to the Waterloo, Cedar Falls & Northern Railway. The railway failed and was reorganized as the W.C.F.&N. Railroad in March, 1942. Passenger service was discontinued February 20, 1956. The present corporation was formed by the Illinois Central and the Rock Island in 1955. On July 1, 1956, the Waterloo Railroad took over the property. Diesel operation started at once and all electric operations ended by August, 1958. Most freight is on the "Waterloo Belt Line".

The Illinois Central Industries has owned the railroad since 1968.

enginehouse. Waterloo, IA

13	E M D	SW-900	900	6-1957	23475-77
4	E M D	SW 900	900	9-1958	24007



GCW No. 201. - Kenneth M. Ardinger coll. (Mac Owen)

#### GARDEN CITY WESTERN RAILWAY CO. — GCW

P.O. Box 597, Garden City, KA 67846

Operates for freight service from a connection with the Santa Fe at Garden City to Wolf, KA, 13.87 miles. Rail is 70/85 pound.

Traffic is farm related products and chemicals. Revenue class D.

The company was incorporated as a freight only railroad on May 29, 1915. It opened for business January 12, 1916.

The railroad is owned by the Garden City Company

enginehouse. Garden City, KA

201	E M D	SW-1	600	10-1952	15624
202	E M D	SW 1	600	4-1949	8154

#### Hutchinson and Northern Railway Co. - HN

A switching and terminal company with two diesel engines operating 5.14 miles of track between Care Mine and Hutchinson, KA.

The company is owned by Interpace Corporation.

enginehouse. Hutchinson, KA

4	Alco	S 1	660	6-1945	7335
5	Alco	S-1	660	6-1945	7357

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FACTS, FIGURES, AND LOCOMOTIVE ROSTERS FOR OVER 500 SHORT LINES

EDWARD A. LEWIS

RAILROAD REFERENCE SERIES NO. 17



gauge Port Huron & Northwestern Railroad in 1882. The Flint & Pere Marquette acquired control in April 1889 and relaid the line to standard gauge. Pere Marquette acquired control in 1900.

CSX sold the line east of Bad Axe to the current operator and shortline service started March 31, 1986. The rest of the line from Saginaw to Bad Axe was purchased from CSX on December 22, 1988. The Vassar cluster consists of former New York Central lines purchased by the state and operated by the Tuscola & Saginaw Bay from 1977 until January 22, 1991, when they were leased to the Huron & Eastern.

The Huron & Eastern is controlled by RailAmerica and is affiliated with the Saginaw Valley Railway.

**Radio frequencies:** 160.440, 161.355

**Location of enginehouses:** Bad Axe and Vassar, Mich.

**Locomotives:** 4

No.	Builder	Model	New	Builder No.
201	EMD	GP38-2	1976	757136-38
202	EMD	GP38-2	1976	757136-39
203	EMD	GP38-2	1976	757136-40
204	EMD	GP38-2	1976	757139-41

### **HUTCHINSON & NORTHERN RAILWAY CO.**

1800 Carey Boulevard  
Hutchinson, KS 67501

**Reporting marks:** HN  
**Phone:** 316-662-0901  
**Fax:** 316-662-0453

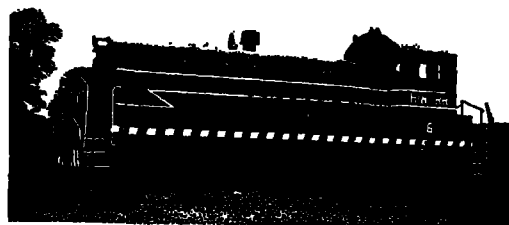
The Hutchinson & Northern operates a switching and terminal line from connections with the Santa Fe, Cotton Belt, and Union Pacific at Hutchinson, Kansas, to the Hutchinson Salt Company's mine at Salt Mine, 5.14 miles. About 2,300 cars a year are carried. The railroad was built in 1923 as an electric line. It is owned by North American Salt Company.

**Radio frequency:** 160.380

**Location of enginehouse:** Hutchinson, Kan.

**Locomotives:** 2

No.	Builder	Model	New	Builder No.
6	EMD	SW900	4/57	23296
7	EMD	SW900	7/55	20406




Hutchinson & Northern SW900 No. 6 is ready to switch the salt mine at Hutchinson, Kansas. Photo by Jim Shaw.

# CERTIFICATE OF SERVICE

I certify that I this day served a copy of the foregoing Rebuttal on Hutchinson Salt Company, Inc., Hutchinson Transportation Company, Inc. and BNSF Railway Company by e-mailing a copy to their counsel, Edward J. Fishman, Esq. at [ed.fishman@klgates.com](mailto:ed.fishman@klgates.com), and on the Association of Railway Museums, Inc. and the Tourist Railroad Association, Inc., by e-mailing a copy to their counsel, Robert T. Opal, Esq. at [RobertTOpal@aol.com](mailto:RobertTOpal@aol.com).

Dated at Washington, DC, this 29<sup>th</sup> day of March, 2011.

  
Fritz R. Kahn